

No. 16214 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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RICHARD WILLIAM BOYD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

FILED

DEC 17 1958

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the  
Southern District of California  
Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

BIRNBAUM & HEMMERLING,  
CLIFFORD A. HEMMERLING,  
433 So. Spring Street,  
Los Angeles 13, California.

For Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;  
ROBERT D. HORNBAKER,  
Assistant U. S. Attorney,  
600 Federal Building,  
Los Angeles 12, California.





United States District Court for the Southern  
District of California, Central Division

No. 26784—CD

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD WILLIAM BOYD,

Defendant.

INDICTMENT

[U.S.C., Title 50, App., Sec. 462—Universal  
Military Training and Service Act]

The grand jury charges:

Defendant Richard William Boyd, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said Act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 113, said Board being then and there duly created and acting, under the Selective Service System established by said Act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said Act and the regulations promulgated thereunder, the defendant was classified in Class I-A and was notified of said classification and a notice and order by said Board was duly given to him to report for induction into the armed forces of the United States of America on February 28, 1958, in Los Angeles County, Cali-

fornia, in the division and district aforesaid; and on or about March 3, 1958, and at said place the defendant knowingly failed and neglected to perform [2] a duty required of him under said Act and the regulations promulgated thereunder in that he knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do.

A True Bill.

/s/ NATHAN SAFIER,  
Deputy Foreman.

/s/ LAUGHLIN E. WATERS,  
United States Attorney.

Bond fixed in the amount of . . . . .

[Endorsed]: Filed April 30, 1958. [3\*]

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[Title of District Court and Cause.]

MINUTES OF THE COURT, AUGUST 11, 1958

Present: Hon. Dave Ling, District Judge.

U. S. Att'y, by Assistant U. S. Att'y: No  
appearance.

Counsel for Defendant: No appearance.

Defendant not present.

Proceedings: In Chambers. (Special Calendar.)

It Is Ordered that defendant's motion for judgment of acquittal is denied.

Court Finds defendant guilty as charged in the Indictment and orders cause continued to 10:00 a.m., Aug. 25, 1958, for imposition of sentence.

Counsel notified.

JOHN A. CHILDRESS,  
Clerk;

By /s/ IRWIN YOUNG,  
Deputy Clerk. [4]

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[Title of District Court and Cause.]

MINUTES OF THE COURT, AUGUST 25, 1958

Present: Hon. Dave W. Ling, District Judge.  
U. S. Att'y, by Assistant U. S. Att'y:  
Thos. R. Sheridan, Esq.  
Counsel for Defendant: Clifford A. Hemmerling, Esq.  
Defendant present (on bond).

Proceedings: Sentence:

It Is Ordered that defendant be committed to the custody of the Attorney General for a period of one (1) year.

It Is Further Ordered that execution of said sentence be stayed for 10 days and that defendant be allowed to remain on bond during that time.

It Is Further Ordered that defendant's motion for new trial be and hereby is denied.

JOHN A. CHILDRESS,  
Clerk;

By /s/ IRWIN YOUNG,  
Deputy Clerk. [5]

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United States District Court for the Southern  
District of California, Central Division

No. 26,784—Criminal

UNITED STATES OF AMERICA,

vs.

RICHARD WILLIAM BOYD.

### JUDGMENT AND COMMITMENT

On this 25th day of August, 1958, came the attorney for the government and the defendant appeared in person and counsel, Clifford A. Hemmerling:

It Is Adjudged that the defendant has been convicted upon his plea of not guilty of the offense of failing and refusing to be inducted into the armed forces of the United States in violation of U.S.C., Title 50, App., Sec. 462—Universal Military Training and Service Act, as charged in the indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause

to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year.

It Is Adjudged that, upon motion of counsel for the defendant, a stay of execution for a period of ten (10) days be, and hereby is, granted.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

[Seal]      /s/ DAVE W. LING,  
United States District Judge.

[Endorsed]: Filed August 25, 1958. [6]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Richard William Boyd, Defendant and Appellant, alleges:

1. The title of this case is "United States of America, Plaintiff, vs. Richard William Boyd, Defendant."

2. Appellant's address is 1271 South Barrington Avenue, West Los Angeles 25, California.

3. The address of Appellant's attorney, Clifford A. Hemmerling, is 433 South Spring Street, Los Angeles 13, California.

4. Appellant was indicted for allegedly violating U.S.C., Title 50, App., Sec. 562, Universal Military Training Service Act, in that he failed and refused to be inducted into the armed forces of the United States.

5. Appellant was found guilty of the charge specified in the indictment and a one-year sentence was imposed. The judgment date is August 25, 1958, and it was entered on August 26, 1958. [7]

6. Appellant appeals from said judgment. He is currently out on bail.

Dated: September 2, 1958.

BIRNBAUM & HEMMERLING,

By /s/ CLIFFORD A. HEMMERLING,  
Attorneys for Defendant-  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 2, 1958. [8]

[Title of District Court and Cause.]

STIPULATION RE: TESTIMONY  
AT TRIAL

It Is Stipulated by and between the Parties hereto as follows:

1. The only evidence at the trial consisted of the introduction into evidence of the Defendant's Selective Service File by the Plaintiff without objection by the Defendant.

2. At the conclusion of the Plaintiff's case, the Defendant moved for a judgment of acquittal on the grounds that (i) the Defendant was denied due process of law in that he was not reclassified after his classification was reopened; (ii) that if Defendant's classification was not reopened by the draft board, its refusal to do so was improper and illegal; (iii) the draft board's purported refusal to reopen as stated in its letter of February 12, 1958, and its previous proceedings were [12] based upon the erroneous theory that Defendant was entitled to be classified as a conscientious objector only if he were a pioneer. This motion was denied. (iv) The other grounds set forth in Defendant's Statement of Points to Be Relied Upon on Appeal; and (V) Selective Service Regulations Section 1625-2 is void and unconstitutional. This motion was denied.

3. Defendant's Motion for a New Trial was based on all of the grounds stated in Paragraph 2 hereof. This motion was denied.

4. This stipulation may be used instead of a reporter's transcript in Defendant's appeal.

Dated: September 29, 1958.

BIRNBAUM & HEMMERLING,

By /s/ CLIFFORD A. HEMMERLING,  
Attorneys for Appellant-  
Defendant.

/s/ ROBERT D. HORNBAKER,  
Assistant United States Attorney, Attorneys for  
Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed September 30, 1958. [13]

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[Title of District Court and Cause.]

### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 16, inclusive, containing the original:

Indictment.

Minute Order of 8/11/58.

Minute Order of 8/25/58.

Judgment.





United States Court of Appeals  
for the Ninth Circuit

Case No. 16214

RICHARD WILLIAM BOYD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON  
APPEAL—RULE 17 (6)

Defendant-Appellant intends to rely upon the points urged before the District Court and will contend that the District Court erred in the following respects:

1. The evidence is insufficient to support the judgment.

2. In failing to grant Defendant's Motion for a Judgment of Acquittal.

3. In failing to grant Defendant's Motion for a New Trial.

4. In failing to acquit the Defendant on the ground that Selective Service Regulations Sections 1625.11 and 1625.12 were not complied with in that Defendant was not reclassified after his classification was reopened on and between December 10, 1957, to February 12, 1958.

5. In failing to find that that portion of the Selective Service Regulations Section 1625.2 reading as follows:

“\* \* \* provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.”

is void insofar as applied to Defendant and conscientious objectors as contrary to the Universal Military Training and Service Act which requires the exemption of conscientious objectors without regard to when an Order to Report for Induction is made.

6. In failing to find that the Defendant's classification should have been reopened on and between December 10, 1957, to February 12, 1958, if, in fact, it was not reopened by the draft board.

7. In failing to find that the draft board's alleged refusal to reopen and reclassify Defendant and his classification was based upon the erroneous theory that the Defendant could be classified as a conscientious objector only if he were a Pioneer.

Dated: October 17, 1958.

BIRNBAUM & HEMMERLING,  
By /s/ CLIFFORD A. HEMMERLING,  
Attorneys for Defendant and  
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 18, 1958.

